

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Applicant,	:
	:
-against-	:
	:
GERALD FAUTH,	:
	:
Respondent.	:
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Case No. 21-mc-787 (ALC)

ECF CASE

DECLARATION OF F. JOSEPH WARIN

I, F. Joseph Warin, declare as follows:

1. I am a partner at the law firm of Gibson, Dunn & Crutcher LLP, in Washington, D.C., and I am counsel for Gerald Fauth in the above-captioned action.
2. I have personal knowledge of the facts stated herein, and, if called to testify, I could and would competently testify to these facts.
3. I was retained by Mr. Fauth and his wife, Mary Fauth, to respond to a subpoena that he received from the U.S. Securities and Exchange Commission ("SEC") dated April 24, 2020, a subpoena from the United States Attorney's Office for the District of Columbia dated April 17, 2020, and a testimonial subpoena from the SEC on May 26, 2020 (collectively, the "Subpoenas").
4. In response to the Subpoenas, I delivered a detailed attorney proffer on

behalf of Mr. and Mrs. Fauth on June 18, 2020, lasting approximately 90 minutes, to the SEC, the Department of Justice (“DOJ”), the Federal Bureau of Investigation, and the United States Attorney’s Office for the District of Columbia. Specifically, Nancy Brown, Tejah Shah, John Enright, and Sheldon Pollock all attended the proffer session on behalf of the SEC.

5. The detailed attorney proffer, among other topics, covered various documents produced by Mr. and Mrs. Fauth, including those collected from the Fauths’ email accounts and mobile telephones; Mr. Fauth’s recollections of the events in early February 2020 to which the SEC refers in its Application of October 20, 2021; additional context and reasons for his trading activity; Mr. Fauth’s professional background and expertise in transportation matters; and general background regarding the Fauths, including their familial relationship with Senator Richard Burr.

6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. No SEC attorney asked any question during the course of the attorney proffer. Shortly after the proffer, on June 25, 2020, I had a brief teleconference with SEC attorneys Tejal Shah and John Enright that included discussion of Mr. and Mrs.

Fauth's possible deposition testimony.

8. I did not hear from the government again until September 11, 2020. On that date, I received email correspondence from James C. Mann, a trial attorney in the Public Integrity Section of DOJ's Criminal Division regarding the potential testimony of Mr. Fauth. *See* Exhibit 1. SEC attorney Tejal Shah was copied on that email. *Id.* I then spoke to attorneys from DOJ and the SEC on September 15, 2020, and after that conversation [REDACTED]

[REDACTED] Exhibit 2. In that correspondence, I also offered the following: "[o]ur client is willing to answer questions in writing if that would assist your inquiries." *Id.* I did not receive any response from the SEC to our offer to answer questions in writing.

9. In response to emails from DOJ, copying an SEC attorney, I sent additional letters to DOJ, copying an SEC attorney, in October and November 2020, to [REDACTED] and to reiterate our offer to answer questions in writing. Exhibits 3 and 4.

10. On January 19, 2021, the New York Times reported that "[t]he Justice Department informed Senator Richard M. Burr, Republican of North Carolina, on Tuesday that it would not pursue insider trading charges against him" and that the criminal investigation into Senator Burr's alleged trading activity had closed. Exhibit 5. I, along with my colleague, Edward Patterson, then spoke to the DOJ

prosecutors regarding the criminal investigation of Mr. Fauth on January 26, 2021. The prosecutors confirmed that the criminal investigation was closed, and I sent a letter to the prosecutors memorializing that conversation on January 27, 2021. Exhibit 6.

11. After I had confirmed that the criminal investigation of Mr. Fauth had been closed in January 2021, I did not hear from the SEC until March 12, 2021, when Ms. Shah asked for a telephone conference. Exhibit 7. This is the first direct communication I had received from the SEC that did not include DOJ since I spoke to Ms. Shah and Mr. Enright on June 25, 2020. On March 18, 2021, I spoke with Ms. Shah, as well as Ms. Brown, regarding the possibility of Mr. Fauth providing testimony.

12. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Exhibit 1 to the Herrera Decl. I also repeated Mr. Fauth's offer to provide additional information and/or written answers to interrogatories or other similar written questions. These communications are reflected in my correspondence to the SEC dated March 26, 2021, May 17, 2021, and September 29, 2021. *See*, Exhibit 8; *see also* Exhibits E and K to the Brown Decl.

13. [REDACTED]

[REDACTED] and I again offered to provide written answers to questions. *See Exhibit K to the Brown Decl.*

14. [REDACTED]

[REDACTED] and reiterated the offers in my September 29 letter. *See Exhibit M to the Brown Decl.*

15. At no point following my detailed proffer in June 2020 have I received any factual questions or requests for additional information from the SEC relevant to its investigation, despite my repeated offers to address any questions the SEC may have in writing. [REDACTED]

16. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of October, 2021, in Washington, DC.



F. Joseph Warin